

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT made this 8th day of November, 2007, by and between Land Master Community Developers, LLC, 110 Orange Avenue, Walden, New York 12586 (hereinafter the "Developer") and the Town of New Windsor, a municipal corporation maintaining an office at 555 Union Avenue, New Windsor, New York (hereinafter the "Town");

RECITALS

WHEREAS, the Developer is the contract vendee purchasing certain real property identified as Town of New Windsor Tax Map Nos. 95-1-3.2 and 95-1-4.2, located south and west of Mt. Airy Road, north of NYS Route 94 and east of Bethlehem Road, which has been proposed for development into 90 single family residences known as the "Meadowbrook Estates Subdivision" (hereinafter the "Project"); and

WHEREAS, the Town of New Windsor Planning Board, as lead agency in a coordinated review under the State Environmental Quality Review Act ("SEQRA"), undertook a review of the potential environmental impacts that may result from the Project, which included the review of a Long Environmental Assessment Form;

WHEREAS, on September 10, 2003, the Town of New Windsor Planning Board adopted a SEQR negative declaration for the 90-lot Project and granted preliminary subdivision approval that will require the extension of both Town-owned public water and public sewer utilities; and

WHEREAS, a portion of the Project was annexed from the Town of Cornwall to the Town of New Windsor in 2005 as part of the unified 90-lot development in order to allow the Project to be developed in accordance with sound planning; and

WHEREAS, the Town of New Windsor Planning Board and the Town of Cornwall Planning Board, prior to annexation, previously granted preliminary subdivision plat approval to the portions of the property in their respective municipalities; and

WHEREAS, on October 4, 2006, the Town adopted a local law zoning the annexed territory as part of the Town's R-1 District in furtherance of the annexation which authorized the Planning Board to continue its review of the application, including the annexed territory, in conformance with the subdivision plat that received preliminary approval for 90 lots; and

WHEREAS, on January 8, 2003, the Town adopted a water moratorium which temporarily prohibits water main extensions; and

WHEREAS, on August 1, 2007, the Town adopted an Order approving the establishment of Water District No. 14 to service this Project and adopted a resolution that the Town of New Windsor Consolidated Water District will supply water to Water District No. 14 in order to serve this Project; and

WHEREAS, on February 1, 2006, the Town adopted a Resolution creating the Town Sewer District # 16 Extension # 2, which extended the Town's sewer service to serve this Project; and

WHEREAS, the Developer has agreed to construct, at its own expense, the water main extensions and other improvements necessary for water service connection between Water District No. 14 and the Town of New Windsor Consolidated Water District; and

WHEREAS, in order to provide water and sewer capacity sufficient to serve the demands of the Project, the Developer has offered to contribute \$100,000.00 to the Town in connection with the Town's application for approval of a water taking permit for the St. Anne wells by the

New York State Department of Environmental Conservation, and upgrade an off-site sewer pump station estimated at a cost of \$450,000.00; and

WHEREAS, the Developer has offered to make these contributions to the public improvements, and based on the improvements and benefits to the water system and the public, including the increased water and sewer capacity resulting from these improvements, the Town has agreed to authorize a waiver for this Project from the water supply moratorium upon the full execution of this Developer's Agreement; and

WHEREAS, the Developer and the Town have therefore entered into this Developer's Agreement for the purpose of recording and memorializing the mutual consent of the Developer and the Town to the terms and conditions herein, and to set forth the Developer's obligations and the Town's commitments, which terms and conditions shall become a title encumbrance and shall run with the land and shall bind the Developer, the Town, and their respective successors and assigns; and

WHEREAS, based on the Long Environmental Assessment Form provided for the project, the SEQR reviews previously conducted by the Town and the Town of New Windsor Planning Board, including the negative declarations issued by the Planning Board for the subdivision, and the Town for the zoning amendment, the annexation, and the extension of utility services, the Town has heretofore (1) determined that this Developer's Agreement is an Unlisted Action, (2) and adopted a SEQR negative declaration that this Developer's Agreement will not have a significant adverse environmental impact on the environment.

TERMS

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. ~~Developer agrees that Developer shall be wholly responsible for all costs and~~ expenses in connection with providing central water and sewer service to the Project from the Water and Sewer Districts including, without limitation, extension of mains, connection of laterals, excavation, grading, engineering and construction costs.
2. The Town shall provide authorization when necessary for the execution by the Town Supervisor of appropriate applications to other agencies, including New York State Department of Environmental Conservation, New York State Department of Health, and Orange County Department of Health for the extension of water and sewer service to the Project, provided that the applications and plans are approved by the Town's engineering consultant prior to execution of the various applications.
3. The Developer agrees that the contribution of \$100,000.00 to the Town in connection with the Town's water taking permit application for the St. Anne wells from the New York State Department of Environmental Conservation shall be paid prior to the issuance of the first building permit for the Project or when the New York State Department of Environmental Conservation approves a water taking permit, whichever occurs earlier.
4. The Developer agrees to replace, at its own cost and expense, Town Sewer Pump Station #14, which shall be completed prior to the issuance of the first certificate of occupancy for the project. Although the cost of the replacement of Town Sewer Pump Station #14 has been estimated to cost \$450,000.00, the Developer shall be responsible for the full actual cost of the replacement of Town Sewer

~~Pump Station #14.~~ The Developer shall provide full shop drawings for the replacement of Town Sewer Pump Station #14 to the Town's consulting engineer for review and approval prior to commencing construction. The Developer shall provide performance security for the completion of this work in an amount and form acceptable to the Town Attorney and the Town's consulting engineer. The Developer shall make and keep current an escrow deposit with the Town for the purposes of reimbursing the Town's costs in connection with inspecting the work as it progresses. The Town's personnel and its consulting engineer shall be given at least 3 days advance notice of any design or construction meeting, and shall have the option of attending such meeting.

5. Upon determination by the Planning Board that money in lieu of dedication of parkland ("recreation fees") should be paid by the Developer, the Town and the Developer hereby agree and stipulate that the recreation fees herein, currently assessed in the amount of \$3,000.00 per residential lot, shall be paid immediately prior to the issuance of each certificate of occupancy for each lot. However, in the event that the Developer intends to transfer title to a lot prior to the issuance of a certificate of occupancy for said lot, the Developer shall pay the recreation fees due to the Town for that lot prior to the transfer of title. The foregoing sentence shall not apply if the Developer transfers title to the Project; in such event the Developer's successor shall be obligated to pay the per-lot recreation fee immediately prior to the issuance of each certificate of occupancy for each lot. The Town agrees to not increase the amount of recreation fees applicable to this

~~Project beyond the current assessment of \$3,000.00 per lot for a period of five~~
years commencing upon the date that this Developer's Agreement is executed.

6. Upon approval and execution of this Developer's Agreement by the parties, the Town shall adopt a resolution waiving the water moratorium with respect to the Project. Following the adoption of the waiver from the moratorium, and subject to the Developer's performance of the other terms of this Agreement, the Developer shall be permitted to obtain building permits to connect to the Town districts' water supply and distribution system, and obtain building permits and certificates of occupancy for the residences to be constructed on the Project, subject to the provisions of this Agreement.
7. The issuance of a certificate of occupancy for a dwelling unit shall be deemed satisfaction of the obligations of this Agreement as to that dwelling unit.
8. The Developer agrees and understands that in the event that this Developer's Agreement is the subject of a legal challenge by a third party, the Developer shall indemnify and hold harmless the Town for all expenses and legal fees resulting from or arising out of such claim or legal proceeding by a third party.
9. The Developer acknowledges that it was represented by counsel in connection with this Developer's Agreement, and the Developer's Agreement was the result of negotiations between the Developer and the Town. The Developer hereby waives any claim or cause of action it may assert against the Town in connection with the negotiation of this Developer's Agreement or the terms hereof.
10. This Developer's Agreement shall be binding upon, and inure to the benefit of, the parties' successors and assigns.

~~11. This Developer's Agreement constitutes the entire agreement between the parties~~

and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, that may have related in any way to the subject matter hereof. Any modification or change to this Developer's Agreement or any waiver of the terms hereof must be made in writing signed by both parties.

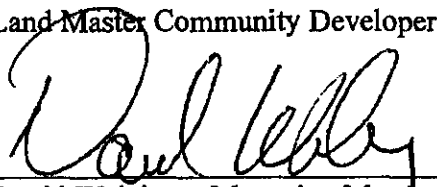
12. The language used in this Developer's Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against either party. This Developer's Agreement shall be governed by and construed in accordance with the laws of the State of New York.

13. Within 62 days following execution, and prior to the issuance of any building permit for the Project, the Developer shall record this Developer's Agreement in the Orange County Clerk's Office at the Developer's expense. The Developer shall provide proof of such recording to the Town Attorney.

14. The parties hereto shall be deemed to have executed this Developer's Agreement upon the date and year set forth above.

Land Master Community Developers, LLC

By:


David Weinberg, Managing Member

Town of New Windsor

By:


George Green, Supervisor

Authorized by Resolution of the Town of New Windsor Town Board on Nov. 7, 2007

STATE OF NEW YORK)

ss.:

COUNTY OF ORANGE)

On the 1st day of November, 2007, before me personally came David Weinberg, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed same.


Notary Public

DALE A. CONROY
Notary Public, State of New York
No. 01CO488478
Qualified in Sullivan County
Commission Expires July 1, 2011

STATE OF NEW YORK)

ss.:

COUNTY OF ORANGE)

On the 8th day of November, 2007, before me personally came George Green, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed same.


Notary Public

DEBORAH GREEN
Notary Public, State of New York
Qualified in Orange County
#4884068
Commission Expires July 15, 2011